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09/820,147	03/28/2001	Eugene S. Dudash	LEAR 0847 PUS (2003 US)	3972

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EXAMINER

COZART, JERMIE E

ART UNIT	PAPER NUMBER
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3726

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/820,147
Filing Date: March 28, 2001
Appellant(s): DUDASH ET AL.

Mark E. Stuenkel
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 10, 20002.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The rejection of claims 13-18 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

3,286,539

LOPER ET AL.

11-1966

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 13-18 rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) in view of Loper et al.

AAPA discloses that it is known to provide openings in the back frame tube and secure the tubes therein by welding. *See Preliminary Amendment, page 2, first full paragraph.*

AAPA, however, does not disclose swaging the guide tube to form a swaged portion engaged with the seat back frame to thereby secure the guide tube to the seat back frame, swaging the guide tube to form an additional swaged portion on the guide tube wherein the additional swaged portion cooperates with the swaged portion to secure the guide tube to the seat back frame, the step of swaging the guide tube to form an additional swaged portion is performed prior to the step of inserting the guide tube into the aperture. AAPA also does not disclose forming a first radially extending swaged portion on the guide tube, forming a second radially extending swaged portion on the guide tube such that the flat portion extends between the swaged portions, such that the swaged portions abut the flat portions to thereby secure the guide tube to the seat back frame.

Loper discloses swaging a guide tube (13) to form a swaged portion (19) engaged with a frame (10) to thereby secure the guide tube (13) to the frame (10),

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swaging the guide tube (13) to form an additional swaged portion (14) on the guide tube wherein the additional swaged portion (14) cooperates with the swaged portion (19) to secure the guide tube (13) to the frame (10), the step of swaging the guide tube to form an additional swaged portion (14) is performed prior to the step of inserting the guide tube into the aperture. Loper also discloses forming a first radially extending swaged portion (14) on the guide tube (13), forming a second radially extending swaged portion (19) on the guide tube such that a flat portion extends between the swaged portions (14, 19), such that the swaged portions abut the flat portions to thereby secure the guide tube (13) to the frame (10).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to attach the guide tubes of AAPA to the frame by swaging instead of welding, in light of the teachings of Loper, in order to more securably retain the guide tube within the aperture of the frame.

(11) *Response to Argument*

Appellant argues that there is no motivation for combining AAPA with Loper et al. '539, and that the Examiner failed to identify or explain any specific understanding or principle within the knowledge of a skilled vehicle artisan that would motivate would motivate one with no knowledge of the present invention to make the combination.

In response to appellant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, AAPA discloses all of the claimed limitations except for attaching the headrest support guide tube to the seat back frame by swaging. Loper et al. '539 provides the teaching of swaging a guide tube onto a plate-like member of a frame, wherein the guide tube has been inserted into the aperture of the frame so as to securably attach the members to one another.

Although Loper is directed towards a pulley, the Examiner states that the test for nonanalogous art is that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Loper et al. '539 is reasonably pertinent to the particular problem with which the appellant was concerned, i.e. directed to the process of swaging a guide tube onto a frame [in Loper's case, one of the pulley halves], wherein the guide tube has been inserted into the aperture of the frame so as to securably attach the members to one another.

The underlying issues that Appellant have raised all appear to be based on whether the Loper et al. reference is analogous and provides the necessary motivation. Appellant's invention is directed to attaching a tube to a frame by swaging, while Loper is directed to attaching a tube to a pulley by swaging. The frame of Appellant's invention consists of a plate-like member, and the pulley of Loper also consists of plate-

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like members wherein a tube is inserted through an aperture of the plate-like members and secured thereto, this process is exactly what Appellant's invention is directed towards. Therefore, Loper is analogous and it would have been obvious to one of ordinary skill in the art to substitute swaging for welding in light of the teachings of Loper, in order to reduce the dangers associated with welding and to effectively join the tube to the plate-like members. In addition, the concept of attaching a tubular part to a frame has been known for a long period of time, and as such the use of swaging has been contemplated in a variety of different fields.

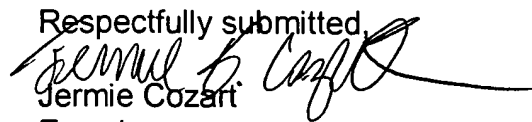
The mere fact that Appellant has decided to use swaging instead of welding does not make the substitution of one type of attaching step for another unobvious when the secondary reference Loper provides the necessary teachings. Swaging is considerably well known and is used as an alternate means of attaching members to one another. As such one of ordinary skill in the art would know that attaching a tubular member to a plate-like member of a frame can be accomplished by swaging, and as a result would look to any particular art which would be concerned with the swaging a tube to a plate-like member of a frame, including arts or fields outside of the seating art.

Therefore, the teachings of Loper et al. would lead one of ordinary skill in the art to combine Loper with AAPA to arrive at Appellant's claimed invention. Moreover, the law does not require that the references be combined for the reasons contemplated by the inventors as long as some motivation or suggestion to combine them is provided, as is the case here, by the prior art taken as a whole. *In re Beattie*, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992).

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Jermie Cozart

Examiner

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DAVID P. BRYANT
PRIMARY EXAMINER

JC

September 25, 2002

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